

UNITED STATES DISTRICT COURT  
FOR THE  
EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

JOHNNY HA and JENNY PHAM a/k/a )  
JENNY HA, )  
Plaintiffs, )  
 )  
v. ) Civil Action No.: 6:22-cv-00462  
 )  
DENISE BRITT NGUYEN )  
Defendant. )

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**DEFENDANT’S OPPOSED RULE 5 ( c) F.R.C.P MOTION TO  
SET ASIDE RULE 5 (a) F.R.C.P CLERK’S DEFAULT ENTRY**

Defendant Denise Britt Nguyen pursuant to Rule 55 ( c) F.R.C.P., move the Court to set aside the Clerk’s Default Entry entered on December 30, 2022 pursuant to Rule 55 (a) F.R.C.P.. In support of this Motion, Defendants states as follows:

**I. BACKGROUND**

1. On December 6, 2022 Plaintiff Original Complaint was filed.
2. On December 7, 2022 Defendant was personally served.
3. Defendant’s deadline to serve Answer was December 28, 2022.
4. Defendant fail to serve an Answer on or before December 28, 2022.
5. Defendant failure to serve an Answer on or before December 28, 2022 formed the predicate for the Rule 55 ( a) F.R.C.P. Default Entry entered by the Clerk on December 30, 2022.

**II. Good Cause For Failure to File Answer**

Defendant Denise Britt Nguyen incorporates by reference Defendant’s Declaration attached hereto as Attachment 1 which details the factors which impacted her inability to timely file an Answer. Defendant failure to file an Answer in summary addresses Defendant inability to retain counsel and her limitation in contacting the undersigned based on a health related matters.

Defendant Declaration also note that her failure to file an answer was not intentional. Counsel would also tender to the Court that the case presented as a Defamation action it is also a “Vietnamese Community Battle.” Several claims are derived from Vietnamese Cultural Beliefs with primarily all publications and representations of Defamation allegations being presented in the Vietnamese Language. The latter factor presents its own sets of language limitations in East Texas in the pursuit of legal representation adding to Defendant’s good cause for failure to server timely Answer.

### **III. Setting Aside Default Not Prejudicial To Plaintiffs**

Defendant would tender to the Court that setting aside of the Default would not be prejudicial to the Plaintiff. In a review of Plaintiff’s Complaint the 11 core claims presented are all derived from Facebook Video Live Streams or Facebook Texts which are stated in Plaintiff Complaint to have all occurred in August 2022. Plaintiff source documents clearly would appear to be readily accessible and not exposed to destruction nor are any of the alleged allegations and or claims believability or ability to prove is reduced by the granting of Defendant Motion to Set Aside Default .

### **IV. Meritorious Defense**

Defendant states in her Declaration that she will utilize “Truth” as a defense in the pending matter. Counsel also tenders to the Court that several claims as to criminal offences and cultural beliefs not actionable or supported by law coupled with multiple state of mind allegations all of which will be presented/addressed in a defensive pleadings by Defendant.

WHEREFORE, Defendant Denise Britt Nguyen respectfully request that this motion be granted in all parts with the Setting Aside of the December 30, 2022 Clerk Entry of Default pursuant to Rule 55 (a) F.R.C.P.. Defendant also respectfully request that upon granting of Defendant’s “Entry of Default Set Aside Request” the Court grant Defendant 7 days to sever Answer to Defendant in respond to Plaintiff’s Complaint.

Respectfully submitted,

**THE HUGHEY LAW FIRM**

BY: /s/ William T. Hughey

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**CERTIFICATE OF CONFERENCE**

The undersigned hereby certifies that counsel for Defendants conferred with via phone with counsel for Plaintiff. Counsel for Plaintiff indicated that it is opposed to this motion.

/s/ William T. Hughey

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that counsel of record who are deemed to have consented to electronic services are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on this the 11<sup>th</sup> day of January 2023.

/s/ William T. Hughey